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Petition of
William W. Watts
for Writ of Habeas Corpus and
Writ of Certiorari.

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Supreme Court of the United States.

To the Honorable, the Justices of the Supreme Court of the United States:

The petition of William W. Watts for a writ of habeas corpus and for a writ of certiorari.

1. The petitioner, William W. Watts, respectfully states that he is a citizen of the state of Kentucky, and a resident of the city of Louisville, in said state, and that he is now, and at all times hereinafter stated was, and for many years has been a practicing attorney-at-law.

The petitioner further states that he is wrongfully and unlawfully detained in custody by Robert Metzger, the sheriff of Marion county, in the state of Indiana, who is *ex officio* jailer of said county, and Henry C. Pettit, the marshal of the United States for the District of Indiana, and that he is now wrongfully and unlawfully, by the said persons, detained and imprisoned in the jail of said county. The said persons, namely, the said jailer and the said marshal arrested and placed the petitioner in custody and so continue to hold him in custody in said jail, under and by virtue of the authority of a certain order and judgment of the District Court of the United States, for the District of Indiana, made and entered by said court on the 14th day of March, A. D., 1903, which said order and judgment is as follows, to wit:

"United States

vs. No. 6377.

William W. Watts and D. A. Sachs.

"And afterwards, to wit, at the November term of said court, on the 14th day of March, 1903, before Hon-

orable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

"Come now Joseph B. Keeling, Esquire, United States Attorney, and the defendants, William W. Watts and D. A. Sachs, in person, and by their respective attorneys also come, and, thereupon the court, having considered the evidence and argument of counsel, and being sufficiently advised in the premises, doth find that said defendants are guilty of the contempt charged. It is, therefore, considered by the court that said defendant, William W. Watts, for the offense charged, be imprisoned and confined in the jail of Marion county, Indiana, for the term of sixty days, and that he do pay unto the United States the costs of this proceeding, taxed at ——— dollars, and that he do stand committed until said costs are paid; and it is further considered by the court that said defendant, D. A. Sachs, for the offense charged, be imprisoned and confined in the jail of Marion county, Indiana, for the term of sixty days, and that he do pay unto the United States the costs of this proceeding, taxed at ——— dollars, and that he do stand committed until said costs are paid."

Upon said order and judgment a certain writ or mittimus was issued by the clerk of the said United States District Court, for the District of Indiana, which, together with the endorsement thereon, is as follows:

"United States of America, District of Indiana, ss.:

"President of the United States, to the Marshal of said District—Greeting:

"Whereas, by the judgment of the District Court of the United States, in and for said district, at the November term thereof, on the 14th day of March, A. D., 1903, William W. Watts, who, before in said court had been convicted of record of the crime of contempt

of court, was sentenced therefor to be imprisoned in the Marion county jail, in said district, for the term of sixty (60) days, and to pay unto the United States the costs of this prosecution, taxed at ——— dollars. You are, therefore, hereby commanded to deliver the body of said William W. Watts into the custody of the jailer of said prison, to undergo the execution of said sentence.

"Witness the Honorable Albert B. Anderson, judge of the District Court of the United States, for the District of Indiana, and the seal of said District Court, this 14th day of March, A. D., 1903.

"Noble C. Butler, Clerk.

"Endorsement: Case No. 6377. District Court of the United States, District of Indiana. United States v. William W. Watts. Warrant to marshal to deliver convict to Marion county jail. Keeling, United States Attorney."

The said order and judgment of the said United States District Court, for the District of Indiana, was and is wrongful and void, and the said court had no jurisdiction to make or enter it, and the making and entering thereof was and is beyond the power of the said court, and the said writ or mittimus was and is void.

2. Your petitioner further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be issued by the clerk of said Floyd Circuit Court, and there was duly issued by the said clerk, a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the sheriff of Floyd county, Indiana, and was by him on the same day duly served on the defendant, M. Zier & Co. The said complaint of Joseph T.

Ryerson & Son against M. Zier & Co., so filed in the Floyd Circuit Court, averred an indebtedness of $15,000 of the said defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendants in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the state of Indiana, and authorized to and was carrying on, as such corporation, the business of manufacturing boilers in the city of New Albany, in the county of Floyd, and state of Indiana; that the said business was a large one; that the said defendant was indebted in the aggregate, to divers persons, in, at least, the sum of $65,000; that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in operation, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors, generally, than if the said propery were properly preserved, and continued as a going concern; and that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed, unless a receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the court might adjudge.

The said Floyd Circuit Court, of the state of Indiana, and the judge thereof, in vacation, were and are by the statutes and laws of the state of Indiana, authorized and empowered to appoint receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional court, and the judge thereof a constitutional officer, made such by the Constitution of the state of Indiana, and the said Floyd Circuit Court is, by the Constitution and laws of the state of Indiana, a court of general, original jurisdiction, and had and has complete jurisdiction of said action.

On the same day on which said complaint was, as aforesaid, filed in the Floyd Circuit Court, and after it was filed and after the issuance and service of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereof to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting judge of the said Floyd Circuit Court, and, as such judge, to appoint a receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint. The said defendant, M. Zier & Co., appeared to said motion, and, after due consideration thereof, the said judge sustained said motion and appointed, by his order, duly made and entered, the New Albany Trust Company as receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the state of Indiana, with full corporate powers, among other things to act as receiver under the appointment of courts. That the said New Albany Trust Company, immediately upon its said appointment, duly qualified as such receiver, and then and there took upon itself the duties of said receivership, and took the oath as required by law and by said order of appointment. That imme-

diately after its said appointment and qualification as receiver aforesaid, and on the same day on which it was appointed as such receiver, and under the order of the said judge of the said Floyd Circuit Court, the said New Albany Trust Company, as such receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co. That after its said appointment the said receiver made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court, in said action, and said inventory shows, and it is true, that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said receiver filed in the Floyd Circuit Court its report and petition, wherein it sought the advice and instruction of said court, with respect to the continuance of the operation of said plant and prayed the court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co, and its officers, and the creditors of said M. Zier & Co., be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co. Said petition further prayed that all creditors of M. Zier & Co. be required to prove their claims against said estate by filing proof thereof with the said receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And, thereupon, upon consideration of said petition,

the Floyd Circuit Court made a certain order, on the 16th day of January, 1903, directing said receiver to continue the operations of the said business of the said M. Zier & Co., and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said court, by the said receiver, that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority, in number and amount, of the creditors of the said M. Zier & Co., appeared in said court, among whom was the Inland Steel Company, and were heard upon the said petition of said receiver, and thereby they became and were and are parties to said action; and after said hearing, and the court being sufficiently advised, the said court ordered and directed that the said receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said court gave to said receiver power and authority to purchase new material for this purpose, but ordered said receiver not to make any new contracts, and gave to said receiver divers other orders and directions, and further ordered that all creditors and other persons be enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said receiver, except by intervening in said cause, or by first obtaining leave of said court in said action, and under said order the said receiver of the said Floyd Circuit Court continued to operate the said plant, made divers and sundry contracts and agreements, and incurred divers and sundry debts and obligations.

The petitioner further states that on the 6th day of February, 1903, more than thirty days after the appointment of the receiver in said action in the said Floyd Circuit Court, and after such receiver had taken possession of the said property of M. Zier & Co., the Inland Steel Company, a creditor who had appeared and was a party to said action in said Floyd Circuit Court, and John C. Thruston and John Dey, doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy, in the District Court of the United States for the District of Indiana, against said M. Zier & Co., alleging certain acts of bankruptcy committed by M. Zier & Co., and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged "that, under certain proceedings in a state court, a receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co., for the benefit of all of its creditors that a receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition, in which it stated, among other things, "that at the instance of said Joseph T. Ryerson & Son, a receiver has been appointed by the Floyd Circuit Court of Floyd county, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed, and that Harry E. Jewett, who is the attorney for said M. Zier & Co., is also the vice-president of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Co., and is completing certain contracts, and, for that purpose, has

employed a large number of men in the manufacturing establishment of said M. Zier & Co., and has placed in charge of said plant one Michael Zier, who is the vice-president and treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work, which is essential to the safe conduct of said business, and your petitioner avers if said receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co., who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. & J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son, in said proceedings wherein the said New Albany Trust Company was appointed receiver, and that said W. W. & J. R. Watts are also attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph T. Ryerson & Son, and said alleged bankrupt, to the detriment of the creditors at large of said alleged bankrupt. Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt, and administer the same under the directions of this honorable court, with the usual powers of receivers in such cases. Wherefore, your petitioner prays that a receiver in bankruptcy be appointed forthwith, and that such other and further orders be entered herein as to Your Honor shall seem meet and proper."

And upon the same day, to wit, on the 11th day of February, 1903, the said District Court of the United States, for the District of Indiana, in said bankrupt proceedings,

upon consideration of said petition filed by the Inland Steel Company, entered and made an order directing, among other things, as follows, to wit:

> "It is, therefore, considered and ordered by the court that Frederick D. Connor be, and he is hereby, appointed as receiver herein of the property of said M. Zier & Co., with authority to take charge and possession of all the same, and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co., located at the city of New Albany, Floyd county, Indiana, and now in the hands of the New Albany Trust Company, as receiver of said M. Zier & Co., appointed by the Floyd Circuit Court of Floyd County, Indiana. Said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said city of New Albany, which said plant is located at the corner of Pearl and Oak Streets, in said city, and all other property of said M. Zier & Co., wheresoever found and situated. It is further ordered and adjudged by the court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor, as receiver, all the said property and effects of said M. Zier & Co., now in its possession, and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same."

Said Frederick D. Connor duly accepted said appointment as the receiver of the District Court of the United States, for the District of Indiana, in said bankruptcy proceedings, and executed bond as such, as is required in the said order of appointment, and duly qualified thereunder.

4. On the 13th day of February, 1903, Frederic D. Connor, as receiver of the said United States District Court, in said bankruptcy proceedings, and acting under

the order appointing him as such receiver, as the petitioner was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co., which it held and had in its possession, as receiver of said Floyd Circuit Court.

The petitioner, who was the attorney of the New Albany Trust Company, as receiver, as aforesaid, and the said receiver, believed that the said United States District Court, and the judge thereof, were not fully informed of the exact situation and condition of the proceedings in the said Floyd Circuit Court, and believed that the said order directing said Frederic D. Connor, receiver of said United States District Court, in said bankruptcy proceedings, to summarily and peremptorily take said property from the said receiver of said Floyd Circuit Court, was made under a misapprehension of the facts relating to said proceedings and action in the said Floyd Circuit Court, and so believing this petitioner, as its attorney, and the said New Albany Trust Company, conferred with respect to the demand of the said Frederic D. Connor, receiver of the said United States District Court, that the said property of the said M. Zier & Co., in the hands of said receiver of said Floyd Circuit Court, be turned over to him as receiver of the said United States District Court, and the result of said conference was that this petitioner telephoned to the judge of the United States District Court, for the District of Indiana, at Indianapolis, and requested him to direct the said Frederic D. Connor not to proceed further with his demand until this petitioner and the New Albany Trust Company could appear before him and explain to him the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court. And the said judge of the United States District Court stated, or caused it to

be stated over the telephone, that such explanations might be made on the folowing Monday, to wit, February 16th, 1903, and said judge of the United States District Court, did direct the receiver, Frederic D. Connor, for the time being, to suspend his demand for the possession of said property.

The petitioner, as its attorney, prepared for the New Albany Trust Company, receiver of the said Floyd Circuit Court, a petition for advice, in which it was stated that Frederic D. Connor had been appointed by the United States District Court in the said bankruptcy proceedings, receiver for the property and effects of M. Zier & Co., and that the order of appointment directed him to take the possession of said property from the said receiver of said Floyd Circuit Court, and stated that in the opinion of the receiver of the Floyd Circuit Court, namely, the New Albany Trust Company, said order had been made under some misapprehension, and stated also the fact that the petitioner had telephoned to the judge of the United States District Court at Indianapolis, and that said judge stated that he would hear the matter on Monday, the 16th day of February, 1903, and said New Albany Trust Company, as receiver, by said petition requested the judge of said Floyd Circuit Court to authorize it or its vice-president, Henry E. Jewett, and this petitioner, as its attorney, to specially appear in the United States District Court at Indianapolis and make a full and complete explanation of the exact condition of the record in the said action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court, and accordingly said petition as filed, on the 14th day of February, 1903, and, thereupon, on said day the said Floyd Circuit Court entered an order among other things authorizing Henry E. Jewett, vice-president of the New Albany Trust Company, Receiver, and this petitioner, as its attor-

ney, to appear before the United States District Court at Indianapolis, by a limited appearance, and by protestation against general appearance, which order in this respect is as follows:

> "And said receiver is now hereby ordered and directed, through its attorney, to proceed to Indianapolis, Indiana, and there, by a limited appearance, and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States, for the District of Indiana, the facts with regard to the matters herein, said injunction, restraining order, and said estoppels, and to suggest to said court the orders of this court and the fact that had it been fully informed, as is believed by this court, its order with respect to the assets herein would at the most have been a direction to make an application to this court at the proper time and in the proper way for delivery of the said assets to such district court's receiver or trustee, after proper disposition and settlement of the matters herein."

All this was done solely for the purpose of preventing any possible conflict between the two jurisdictions, and it was believed by this petitioner and by the said New Albany Trust Company, and by the judge of the Floyd Circuit Court, that upon such presentation, the United States District Court would rescind its said order in so far as it directed said Frederic D. Connor, as receiver of said United States District Court, to summarily take possession of said property of M. Zier & Co., from said receiver of said Floyd Circuit Court. Under this authorization, and not otherwise, this petitioner and Henry E. Jewett, vice-president of the New Albany Trust Company, Receiver, of the said Floyd Circuit Court, did appear in the District Court of the United States, for the District of Indiana, at Indianapolis, on Monday, February 16, 1903,

and exhibited to the said court, the said order of the Floyd Circuit Court, authorizing them to appear, and made to the said court a full and complete statement of the condition of the said action of Joseph T. Ryerson & Son against M. Zier & Co., in the Floyd Circuit Court, and of all the proceedings had therein.

But so it is that after said explanation and statement had been made and argued by this petitioner before the judge of the said United States District Court, which argument and explanation consumed several hours, and continued over from Monday, February 16th until Tuesday, February 17th, the judge of the said United States District Court, refused in any way or to any extent to reconsider, modify or set aside his said order directing Frederic D. Connor, receiver of said United States District Court, to summarily take from the said receiver of the said Floyd Circuit Court, the said property, but, upon the contrary, peremptorily demanded of Henry E. Jewett, as the representative of the New Albany Trust Company, Receiver, to state whether or not he would turn over the property in the hands of the New Albany Trust Company, as receiver aforesaid, to Frederic D. Connor, receiver, and so demanded of this petitioner whether or not he, as counsel for the New Albany Trust Company, Receiver, would advise it to turn over said property to Frederic D. Connor, Receiver, the judge remarking at the time that he did not want to go to New Albany with a club, but would do so, if necessary, to obtain the property. Under these circumstances, and not otherwise, and believing that the said demand of said Judge of the said United States District Court was peremptory, the petitioner, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company, Receiver, to turn over the said property to the said Frederic D. Connor, Receiver.

On the 17th day of February, 1903, the petitioner and the said Henry E. Jewett, left Indianapolis, and this petitioner was under the impression that it was not necessary to enter any order respecting the proceedings which were had in the United States District Court, on the 16th and 17th of February, 1903, with respect to the said explanation and arguments made by this petitioner, and was under the impression that no order would be entered in respect thereto. But this petitioner says that an order was entered, a fact which he learned several days afterward, which order is as follows:

"This cause coming on now to be heard upon the petition of Freelire D. Connor, filed herin on the 16th day of February, A. D., 1903, for the instructions of the court concerning the property and assets of said M. Zier & Co., which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Co., because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, receiver as aforesaid, being now present and represented by Henry E. Jewett, its vice-president, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said vice-president, having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Co., in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such receiver heretofore made by this court.

"It is now hereby ordered by the court that said Connor, receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Co., that are now in possession or under control of said New Albany Trust Company, as receiver of the Floyd Circuit Court."

The said New Albany Trust Company, as receiver of the said Floyd Circuit Court, was and is in no way a party to said bankruptcy proceedings in said United States District Court, and had and has in no way appeared therein, except only upon the occasion, and under the circumstances, and by the authority hereinbefore stated.

On the 14th day of February, 1903, the said Frederic D. Connor, as said receiver of the United States District Court, by George H. Hester, as his attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co., and filed his verified petition therein, showing his appointment as such receiver by order of the United States District Court for the District of Indiana and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as receiver of said Zier & Co., to turn over and surrender to him, the said Frederic D. Connor, as receiver in bankruptcy, the property of the said M. Zier & Co., of which the said New Albany Trust Company, as receiver of M. Zier & Co., under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Conner, as such receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court. Said 14th day of February was the last days of the then term of said Floyd Circuit Court. Copies of the said petition and

order made therein are filed herewith as ~~Barkley's~~ further marked "Exhibit C."

On the 19th day of February, 1903, this petitioner and the New Albany Trust Company, Receiver, appeared before the Judge of said Floyd Circuit Court at New Albany in Chambers, for the purpose of formally reporting to him the result of their appearance before the United States District Court at Indianapolis on the 16th and 17th days of February. This petitioner, as attorney for the New Albany Trust Company, then filed before the said Judge of said Floyd Circuit Court a written petition and motion which was signed by him as attorney as follows, to-wit:

"To the Honorable Judge of the Floyd Circuit Court in Chambers:

"Respectfully represents the New Albany Trust Company, Receiver herein, and W. W. Watts, one of its attorneys herein, that pursuant to the order of the court herein entered on Saturday, February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind., filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge, presiding, a statement of the New Albany Trust Company, Receiver, under the order of this court setting forth the facts by protestation and limited appearance only and showing to said court the reasons for a modification of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its receiver to take possession of the assets of M. Zier & Co.

"This receiver and said attorney say they have made diligent effort to carry out the orders of this court with respect to those matter, but the order of said court remains as it was and they now move the court to strike and expunge from the files herein the petition of this receiver filed herein on the 14th day of February, 1903, and the order entered thereon."

Upon the aforesaid appearance made by this petitioner and said Henry E. Jewett, vice-president of the said New Albany Trust Company on the 16th and 17th days of February, 1903, before the United States District Court at Indianapolis, the Judge of said court seemed to feel that the petition for advice which the said New Albany Trust Company, Receiver, by this petitioner as its attorney, filed in the Floyd Circuit Court on the 14th day of February, 1903, was in some way offensive to him, the said Judge of the District Court of the United States, and for this reason this petitioner sought by said petition and statement filed before the Judge of said Floyd Circuit Court to have leave to strike out and expunge the said petition, and withdraw it from the files. This petitioner did advise and continue to advise, and at no time gave any contrary advice that the said New Albany Trust Company, as receiver of the Floyd Circuit Court, should turn over to Frederic D. Connor, receiver of the United States District Court in such bankruptcy proceedings, all of the property, assets and effects of M. Zier & Co., alleged bankrupts, and for this purpose said petition and statement was filed by this petitioner as attorney for the New Albany Trust Company, Receiver, and was signed by him as such attorney on the 19th day of February, 1903, before the Judge of the said Floyd Circuit Court. And this was done in good faith because he had stated to the Judge of the said United States District Court, that he would so advise. This petitioner was much embarrassed by the condition of affairs, and felt that the Judge of the said Floyd Circuit Court might disapprove his action in the premises, and before going to New Albany on the 19th of February, 1903, he sought Mr. David A. Sachs, who is a lawyer residing in Louisville, Ky., and who is a friend of this petitioner, and asked him to go to New Albany with him for the purpose of appearing for this petitioner

before the Judge of the Floyd Circuit Court and explaining the action of this petitioner in agreeing to advise the New Albany Trust Company, Receiver, to turn over the said property to Frederic D. Connor, Receiver. The said Sachs did go with this petitioner to New Albany and was present when the said petition and statement was filed before the Judge of the Circuit Court of Floyd County on that day, and the said Sachs did undertake to explain the situation and to satisfy the said Judge. After filing the said petition and on the same day, to-wit, on the 19th day of February, 1903, the said Judge of the said Floyd Circuit Court made and entered the following order upon said petition and statement, to-wit:

> "And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of court, and it is now ordered that a rule be issued against the said W. W. Watts to appear before the said Judge on the 21st day of February, 1903, at 3 o'clock p. m., and show cause, if any he has, why he should not be punished for contempt."

On the same day, towit, February 19th, 1903, the New Albany Trust Company, Receiver, by Henry E. Jewett, vice-president, filed before the Judge of said Floyd Circuit Court its other and separate petition, which is as follows:

> "The New Albany Trust Company, receiver in the above entitled cause, respectively shows to the court that in pursuance of the order heretofore made by this court it appeared by limited appearance and protestation only as ordered by this court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday, the 16th day of February, 1903, and that upon the hearing in that court this receiver stated to the Honor-

able Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in bankruptcy proceedings of M. Zier & Co., then pending in said court the property and assets of said M. Zier & Co. in the hands of this receiver, and this receiver further states that it has not yet been able to make up its accounts as receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this court. But that it is ready to turn over to Frederic D. Connor, the receiver appointed by the United States District Court in bankruptcy, all of the property of the said M. Zier & Company; and this receiver now prays for an order of this court authorizing it to turn over to said Frederic D. Connor, the property and assets of said M. Zier & Co., now in its hands, together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederic D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Co. so turned over to said Connor as such receiver.

"This receiver further asks that upon making up and presentation of its accounts for allowances to this court, that it be allowed to resign as receiver of the said M. Zier & Co., and that upon the approval of its accounts its said resignation be accepted by this court, and that it be fully and finally discharged as such receiver.

"All of which is respectfully submitted.

"The New Albany Trust Company.

"By Henry E. Jewett,
Vice-President."

And afterwards, to-wit, on the same day the Judge of said Floyd Circuit Court, upon consideration of said petition and statement, made the following order:

"And the Judge after reading said tender of resignation holds that the matters therein set forth show

that said receiver is in contempt of court, and the Judge orders that a rule issue at once against said receiver to appear before the undersigned Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any it has, or can, why it should not be punished for contempt of court."

And on the same day, to-wit, the 19th day of February, 1903, after the said New Albany Trust Company had filed its petition and statement and asked leave to resign before the Judge of the said Floyd Circuit Court, the said New Albany Trust Company addressed to Frederic D. Connor, receiver for the United States District Court, for the District of Indiana, the following letter, to-wit:

"Fred D. Connor,
Receiver, U. S. District Court,
District of Indiana.

"In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier and Company, as such receiver will state:

"We, this morning, filed before the Judge of the Floyd Circuit Court, in Chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then, it will relieve us of embarrassment in the premises.

"On the other hand, if you insist on immediate surrender of the property to you, we are bound to say that we believe that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
The New Albany Trust Company,
By H. E. Jewett,
Vice-Pres't."

"February 19th, 1903."

On the same day and after receipt by said Frederic D. Connor of said communication, he expressed to the New Albany Trust Company, Receiver, his unwillingness to delay the delivery of said property to him, and thereupon on said day the said property was delivered to him by the said New Albany Trust Company, Receiver, without any authorization or direction of the Floyd Circuit Court or the Judge thereof.

On the following day, namely, February 20th, 1903, this petitioner appeared before the Judge of the said Floyd Circuit Court, because the said Judge had by telephone on the evening before requested his presence, and in pursuance of this request and in obedience thereto, this petitioner appeared. On that day an order was entered removing the New Albany Trust Company as receiver of the Floyd Circuit Court in said action, and appointing Charles D. Kelso as receiver in its stead, and directing the said Kelso as receiver to demand of the said New Albany Trust Company and of Frederic D. Connor the immediate possession of the property of M. Zier & Co., which came into the hands of said New Albany Trust Company, as receiver in the action, and requiring the said Kelso, receiver, if the said New Albany Trust Company, or said Frederic D. Connor, should fail or refuse to immediately turn over or surrender possession of said assets and property to said Kelso, receiver, to report that fact to the Judge of the court. Before entering this order, the New Albany Trust Company had actually, under the advice of this petitioner (said Watts) turned over said property to Frederic D. Connor, receiver of the United States District Court, for the District of Indiana, in said bankruptcy proceedings, as above stated. This petitioner did not advise, aid, connive at or abet the making or the entry of said order of the Judge of said Floyd Circuit Court removing the New Albany Trust Company, receiver, and appointing

Charles D. Kelso as receiver, and had nothing whatsoever to do with it.

On the 20th day of February, 1903, after the entry of said order, appointing him receiver in the stead of the New Albany Trust Company, Charles D. Kelso filed a written report before the Judge of said Floyd Circuit Court in which it was stated that he demanded of the New Albany Trust Company possession of all the property and assets of said M. Zier & Co. which came into its hands as receiver of said M. Zier & Co., and that said New Albany Trust Company failed and refused to surrender the possession thereof for the reason as stated by it that it had turned over the plant of M. Zier & Co., located on Pearl and Oak streets in the city of New Albany to Frederic D. Connor, and that as to the other assets of said M. Zier & Co. in its hands it intended to account forthwith to the Honorable Judge of the Floyd Circuit Court.

And afterwards on the same day upon consideration of said report, the Judge of the said Floyd Circuit Court entered an order directing the issuance of a summary writ directed to the sheriff of Floyd county, requiring the said sheriff to immediately seize and take into his possession and deliver over to said Charles D. Kelso, receiver of M. Zier & Co., all the property of said M. Zier & Co., which said Frederic D. Connor had in his possession, which property was described in said order. This petitioner did not procure the entry of said order or connive at its entry or advise its entry, and did not know of its entry until after it had been entered. He had no connection whatever with it.

As this petitioner is informed, upon said last named order a writ was issued by the clerk of said Floyd Circuit Court and placed in the hands of the sheriff of said Floyd county, and that the same was executed and the property taken from the possession of Frederic D. Connor, and

given into the possession of Charles D. Kelso, receiver of the said Floyd Circuit Court. But this petitioner did not advise said writ to be issued or connive at its issuance, and did not know of its issuance until after it had been issued and served. He had no connection whatever with it.

This petitioner further states that after his appearance before the United States District Court at Indianapolis on the 16th and 17th days of February, 1903, all of his acts and doings and advice were with the single purpose of having the New Albany Trust Company, Receiver, at once turn over all of the property and effects of M. Zier & Co. to Frederic D. Connor, receiver of the said United States District Court in said bankruptcy proceedings; and he did nothing and said nothing and advised nothing which would in any way or to any extent obstruct or delay the execution of that purpose. He did nothing and said nothing and advised nothing with reference to the removal of the New Albany Trust Company as receiver and the appointment of Charles D. Kelso as receiver. He in no way, nor to any extent, directly or remotely or contingently, did anything or advised anything looking to the retaking of said property from the hands of said Frederic D. Connor, Receiver, and with reference to all of these things he had nothing whatsoever to do.

4. After said property which was in its hands as receiver was delivered by the New Albany Trust Company, receiver of the said Floyd Circuit Court, to Frederic D. Connor, receiver of the said United States District Court in the manner and under the circumstances hereinbefore stated, and after the removal by the Judge of the said Floyd Circuit Court of said New Albany Trust Company as receiver, and the appointment of Charles D. Kelso as receiver in its stead, and after the said property was, under the aforesaid writ, taken by the sheriff of Floyd county, Indiana, from the possession of Frederic D. Connor and

placed in the possession of Charles D. Kelso, receiver of the said Floyd Circuit Court, to-wit, on the 21st day of February, 1903, the said Frederic D. Connor, Receiver, filed his certain petition and affidavit in said bankruptcy proceedings in said United States District Court, stating and showing, among other things, said facts, and upon consideration of said petition and affidavit, the said United States District Court on said 21st day of February, 1903, in said bankruptcy proceedings, made and entered an order, ordering among other things, as follows:

> "It is further ordered by the court that Charles D. Kelso as receiver of M. Zier and Company under the appointment of the Floyd Circuit Court, and individually, Raymond J. Morris, sheriff of Floyd county, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd county, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court, William W. Watts and D. A. Sachs as attorneys for Charles D. Kelso as such receiver, and individually, and each of them, are hereby required to appear before this court at Indianapolis in this Distrist on Wednesday, the twenty-fifth day of February, 1903, at nine o'clock a. m. of said day, and then and there show cause why they should not be punished for contempt for the violation of the orders of said court heretofore made herein.
>
> "It is further ordered by the court that the marshal of this district shall serve each of the parties named in the foregoing order by the delivery of a copy thereof to them and each of them. . . .
>
> "It is ordered by the court, that, so far as the proceedings upon the petition of the receiver filed on the 21st day of February, 1903, are instituted against the parties named therein for a contempt of this court, they shall be docketed in this court at Indianapolis and henceforth conducted under the title of the United States against the parties aforesaid."

The petitioner further states that afterwards, on the same day, to-wit, on the 21st day of February, 1903, the United States District Attorney for the District of Indiana, filed an information in the District Court of the United States for said District, which is as follows:

"United States of America, District of Indiana, ss.:

In the District Court of the United States, for the District of Indiana.

November Term A. D. 1902, at Indianapolis.

"Now comes Joseph B. Kealing, Attorney of the United States in and for the District of Indiana, who prosecutes for the said United States in this behalf in his own proper person and in the name and on behalf of the United States, alleges, informs and declares as follows, to wit:

"That in a certain proceeding in bankruptcy in the said District of Indiana, to-wit:

"In the matter of M. Zier & Co., Bankrupts, Case No. 37, in the said court pending at New Albany, Indiana, certain orders and decrees had been made by the said United States District Court, the Hon. Albert B. Anderson, presiding Judge, whereby Frederick D. Connor was appointed receiver to take charge of the property, goods, wares and merchandise of the said M. Zier & Co., bankrupts aforesaid. That he had qualified as such receiver and had lawfully taken possession of the said property aforesaid, then and there situated at New Albany, under and by virtue of the said order made by the court aforesaid. All of which more fully appears in the affidavit herewith and upon which this Information is based.

"That on the 20th day of February, A. D. 1903, that Raymond J. Morris, Claude Sittison, Thomas Smithwick, Charles D. Kelso, William W. Watts and D. A. Sachs, whose given name is unknown to the affiant who made said affidavit, and to the Attorney for the United States herein did then and there wrongfully, unlawfully, knowingly and forcibly take from

the said Frederick D. Connor, receiver as aforesaid the property, goods and chattels of M. Zier & Co., Bankrupts, and then and there withhold wrongfully, knowingly and unlawfully the possession and custody of said property from the said Frederick D. Connor, receiver as aforesaid, well knowing at the time that he was the lawfully appointed receiver of the said United States District Court, aforesaid, and then and there knowingly, wrongfully, unlawfully and willfully disregard and disobey the orders and decrees of the said court, all of which more fully appears in the accompanying affidavit which is made a part hereof, whereby they are each guilty of contempt of this court, contrary to the form of the statutes and against the peace and dignity of the United States.

Joseph B. Kealing,
United States Attorney."

The sajd affidavit referred to in said Information is the same affidavit made by Frederic D. Connor, and filed in said bankruptcy proceedings as aforesaid, and the same upon which said rule in said bankruptcy proceedings was awarded.

The said rule and information as to this petitioner and D. A. Sachs were set for hearing on the 9th day of March, 1903, and on that day the petitioner appeared in said United States District Court at Indianapolis to respond to said rule and information. Upon the calling thereof the petitioner inquired of the court whether he was required to respond to said rule or plead to said Information, and the court ruled and adjudged that the petitioner should respond to said rule and plead to said Information conjointly. Whereupon the petitioner filed his response and pleas to said rule and Information, separate from the response and pleas of D. A. Sachs. The said response denied the jurisdiction and power of the said United States District Court to make the orders directing its said receiver summarily to take from said receiver of the said

Floyd Circuit Court the said property in the hands of the latter, and asserted that the possession of the property which the said receiver of the said United States District Court acquired from the New Albany Trust Company, then acting as receiver of said Floyd Circuit Court, without the consent and against the orders of said court, was an unlawful possession, and that the said retaking of said property under the orders of the Floyd Circuit Court was a lawful taking, but nevertheless, that the petitioner had nothing whatever to do with the retaking of said property; and the said response further set out all the facts substantially as they are stated in this petition.

Upon the filing of said response and pleas the District Attorney offered to introduce the testimony of witnesses to dispute in evidence the matter of said response and pleas, to which the petitioner then objected, on the ground that for the purposes of the proceedings for contempt the said response and pleas should be taken as true, but the court overruled the objection, to which the defendant excepted.

Thereupon the trial proceeded, and the District Attorney for the United States introduced oral and documentary evidence, and the petitioner did the like. The trial consumed several days and at the conclusion of all the evidence and after argument of counsel the court delivered an opinion and made and entered the said order and judgment hereinbefore set out, adjudging the petitioner guilty of contempt, and ordering that he be confined in the jail of Marion county, Indiana, for the period of sixty days. The petitioner was at once committed to custody, and under said order and judgment he is now wrongfully and unlawfully confined in said jail.

The petitioner files herewith as parts of this, his petition, a complete transcript of the record in the case of Joseph T. Ryerson & Son v. M. Zier & Co. pending in the

Floyd County Indiana Circuit Court, marked "Exhibit A"; and a complete transcript of the record in the said bankruptcy proceedings in the United States District Court for the District of Indiana, including the proceedings upon said rule and Information, marked "Exhibit B."

Wherefore, the petitioner prays that Your Honors grant and issue a writ of habeas corpus directed to Robert Metzger, sheriff of Marion county in the State of Indiana, and *ex officio* jailer of said county, and Henry C. Pettit, marshal of the United States for the District of Indiana, either or both as Your Honors may deem proper in the premises, commanding them to produce before Your Honors upon a day to be named in the writ the body of your petitioner, to the end that Your Honors may inquire into the cause of restraint of the petitioner's liberty.

And your petitioner further prays that Your Honors grant and issue a writ of certiorari agreeably to the rules and practice of this Honorable Court, and further that Your Honors order and direct, by such order as may be appropriate in the premises, that the petitioner be admitted to bail conditioned for his appearance before this Honorable Court on the return day of the writ of habeas corpus, and your petitioner prays for such other or further orders as to Your Honors may seem meet.

WILLIAM W. WATTS.

State of Indiana, Marion County, ss:

William W. Watts, being duly sworn, upon his oath says that the averments of the foregoing petition are true as he verily believes.

WILLIAM W. WATTS.

Subscribed and sworn to before me, the undersigned, this 17th day of March, 1903.

(Seal.) LOU A. ROBERTSON,
Notary Public, Marion County, Indiana.

My commission expires November 26, 1904.

State of Indiana, Marion County, Set:

I, William E. Davis, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court within and for said county and State, the same being a Court of Record, and having a seal, do hereby certify that Lou A. Robertson was on March 17, 1903, an acting Notary Public, within and for the county aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify all affidavits and the acknowledgments and proof of deeds or conveyances, and all other instruments of writing, and that the commission of the said Lou A. Robertson, commenced on November 26, 1900, and expires on November 26, 1904.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, at Indianapolis, Indiana, this 17th day of March, 1903.

(Seal.) WM. E. DAVIS, Clerk.

FILE COPY.

Office Supreme Court U.S.
FILED
MAR 23 1903
JAMES H. McKENNEY
Clerk

16 Orig.

Petition of David A. Sacks

for Writ of Habeas Corpus and

Writ of Certiorari.

FILE COPY.

Supreme Court of the United States.

To the Honorable the Justices of the Supreme Court of the United States.

The petition of David A. Sachs for a writ of habeas corpus and for a writ of certiorari.

1. The petitioner, David A. Sachs, respectfully states that he is a citizen of the State of Kentucky and a resident of the City of Louisville in said state, and that he is now and at all times hereinafter stated was, and for many years has been a practicing attorney at law.

The petitioner further states that he is wrongfully and unlawfully detained in custody by Robert Metzger, the Sheriff of Marion County in the State of Indiana, who is the ex officio jailer of said county, and Henry C. Pettit, the Marshal of the United States for the District of Indiana, and that he is now wrongfully and unlawfully, by the said persons, detained and imprisoned in the jail of said county. The said persons, namely, the said jailer and the said marshal arrested and placed the petitioner in custody, and so continue to hold him in custody in said jail under and by virtue of the authority of a certain order and judgment of the District Court of the United States for the District of Indiana, made and entered by said court on the 14th day of March, A. D. 1903, which said order and judgment is as follows, to-wit:

"United States,

vs. } No. 6377.

William W. Watts and D. A. Sachs.

"And afterwards, to-wit, at the November term of said court on the 14th day of March, 1903, before

Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

"Come now Joseph B. Keeling, Esquire, United States attorney and the defendants, William W. Watts and D. A. Sachs, in person, and by their respective attorneys also come, and thereupon the court having considered the evidence and argument of counsel, and being sufficiently advised in the premises, doth find that said defendants are guilty of the contempt charged. It is therefore considered by the court that said defendant, William W. Watts for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United States the costs of this proceeding, taxed at dollars, and that he do stand committed until said costs are paid; and it is further considered by the court that said defendant, D. A. Sachs, for the offense charged, be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United States the costs of this proceeding, taxed at dollars, and that he do stand committed until said costs are paid."

Upon said order and judgment a certain writ or mittimus was issued by the clerk of the said United States District Court for the District of Indiana, which, together with the endorsement thereon, is as follows:

"United States of America, District of Indiana, ss:

"President of the United States. To the marshal of said district, Greeting:

"Whereas, by the judgment of the District Court of the United States, in and for said district, at the November term thereof, on the 14th day of March, A. D. 1903, David A. Sachs, who, before in said court had been convicted of record of the crime of contempt of court, was sentenced therefor to be im-

prisoned in the Marion county jail in said district for the term of sixty (60) days, and to pay unto the United States the costs of this prosecution, taxed at ———— dollars:

"You are therefore hereby commanded to deliver the body of the said David A. Sachs into the custody of the jailer of said prison to undergo the execution of said sentence.

Witness, the Honorable Albert B. Anderson, Judge of the District Court of the United States for the District of Indiana and the seal of said District Court, this 14th day of March, A. D. 1903.

"Noble C. Butler.

Endorsement:

"Case No. 6377. District Court of the United States, District of Indiana. United States v. David A. Sachs. Warrant to Marshal to deliver convict to Marion county jail. Keeling, United States Attorney."

The said order and judgment of the said United States Court for the District of Indiana was and is wrongful and void, and the said court had no jurisdiction to make or enter it, and the making and entering thereof was and is beyond the power of the said court, and the said writ or mittimus was and is void.

2. Your petitioner further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be issued by the clerk of said Floyd Circuit Court, and there was duly issued by the said clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd county, Indiana, and was by him on the same day duly served on the defendant, M. Zier & Co. This said

complaint of Joseph Ryerson & Son against M. Zier & Co., so filed in the Floyd Circuit Court, averred an indebtedness of $15,000 of the said defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendants in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the city of New Albany, in the county of Floyd and State of Indiana; that the said business was a large one; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in operation, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed unless a receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the court might adjudge.

The said Floyd Circuit Court, of the State of Indiana, and the judge thereof in vacation were and are by the statutes and laws of the State of Indiana authorized and empowered to appoint receivers of and for insolvent corporations and their property, assets; that the said Floyd Circuit Court is a constitutional court, and the judge thereof a constitutional officer, made such by the constitution of the State of Indiana, and the said Floyd Circuit Court is by the constitution and laws of the State of Indiana a court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed and after the issuance and service of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereof to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting judge of the said Floyd Circuit Court, and as such judge to appoint a receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint. The said defendant, M. Zier & Co., appeared to said motion and, after due consideration thereof, the said judge sustained said motion and appointed by his order, duly made and entered, the New Albany Trust Company as receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate powers, among other things to act as receiver under the appointment of courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such receiver, and then and there took upon itself the duties of said receivership. That immediately after its said appointment and qualification as receiver aforesaid, and on the same day on which it was appointed as

such receiver, and under the order of the said judge of the said Floyd Circuit Court, the said New Albany Trust Company, as such receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co. That after its said appointment, the said receiver made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said receiver filed in the Floyd Circuit Court its report and petition, wherein it sought the advice and instruction of said court with respect to the continuance of the operation of said plant, and prayed the court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co., and its officers and the creditors of said M. Zier & Co., be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuation of the operation of the plant of the said M. Zier & Co. Said petition further prayed that all creditors of M. Zier & Co. be required to prove their claims against said estate by filing proof thereof with the said receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon, upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said receiver to continue the operations of the said business of the said M. Zier

& Co., and to carry out certain contracts for manufacturing boilers and appliances, which were stated in the said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said court by the said receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said receiver to be present on the said 24th of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Co. appeared in said court, among whom was the Inland Steel Company, and were heard upon the said petition of said receiver, and thereby they became and were and are parties to said action; and after said hearing and the court being sufficiently advised, the said court ordered and directed that the said receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said court gave to said receiver power and authority to purchase new material for this purpose, but ordered said receiver not to make any new contracts, and gave to said receiver divers other orders and directions, and further ordered that all creditors and other persons be enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said receiver except by intervening in said cause, or by first obtaining leave of said court in said action, and under said order the said receiver of the said Floyd Circuit Court continued to operate the said plant, made divers and sundry contracts and agreements, and incurred divers and sundry debts and obligations.

The petitioner further states that on the 6th day of February, 1903, more than thirty days after the appoint-

ment of the receiver in said action in the said Floyd Circuit Court and after said receiver had taken possession of the said property of M. Zier & Co., the Inland Steel Company, a creditor who had appeared and was a party to said action in said Floyd Circuit Court, and John C. Thruston and John Dey, doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co., alleging certain acts of bankruptcy committed by M. Zier & Co. and praying that the said M. Zier & Co. be adjudged bankrupt. The said petition in bankruptcy further alleged 'that, under certain proceedings in a State Court, a receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate, which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co., for the benefit of all of its creditors that a receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things, "That at the instance of said Joseph T. Ryerson & Son, a receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed, and that Harry E. Jewett, who is the attorney for the said M. Zier & Co., is also the viec-president of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Co., and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establish-

ment of said M. Zier & Co., and has placed in charge of said plant one Michael Zier, who is vice-president and treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co., who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son, in said proceedings wherein the said New Albany Trust Company was appointed receiver, and that said W. W. & J. R. Watts are also attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt. Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this Honorable Court with the usual powers of receivers in such cases. Wherefore your petitioner prays that a receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your honor shall seem meet and proper."

And upon the same day, to wit, on the 11th day of February, 1903, the said District Court of the United States for the District of Indiana, in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company, entered and made an order di-

recting among other things as follows, to wit: "It is therefore considered and ordered by the court that Frederick D. Connor be and he is hereby appointed as receiver herein of the property of said M. Zier & Co., with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of, or belonging, to said M. Zier & Co., located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as receiver of said M. Zier & Co., appointed by the Floyd Circuit Court of Floyd County, Indiana. Said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak streets in said city, and all other property of said M. Zier & Co. wheresoever found and situated. It is further ordered and adjudged by the court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor, as receiver, all the said property and effects of said M. Zier & Co., now in its possession, and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same."

Said Frederick D. Connor duly accepted said appointment as the receiver of the District Court of the United States for the District of Indiana in said bankruptcy proceedings, and executed bond as such, as is required in the said order of appointment, and duly qualified thereunder.

4. On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said bankruptcy proceedings, and acting under the order appointing him as such Receiver, as the petitioner was informed and believed, appeared at New Albany, In-

diana, and demanded of the New Albany Trust Company, that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

Your petitioner states that said W. W. Watts was the attorney of the New Albany Trust Company, as Receiver as aforesaid, and he is informed that the said Receiver believed that the said United States District Court and the Judge thereof were not fully informed of the exact situation and condition of the proceedings in the said Floyd Circuit Court, and believing that the said order directing said Frederic D. Connor Receiver of said United States District Court in said bankruptcy proceedings, to summarily and peremptorily take said property from the said Receiver of said Floyd Circuit Court, was made under a misaprehension of facts relating to said proceedings and actions in said Floyd Circuit Court, and so believing, he is informed that said W. W. Watts, as it attorney, and the said New Albany Trust Company, conferred with respect to the demand of Frederic D. Connor, Receiver of the United States District Court, that the said property of the said M. Zier & Co. in the hands of the Receiver of the Floyd Circuit Court be turned over to him as Receiver of the United States District Court, and the result of said conference as he is informed, was that said W. W. Watts telephoned to the Judge of the United States District Court for the District of Indiana at Indianapolis, and requested him to direct the said Frederic D. Conner not to proceed further with his demand until the said W. W. Watts and the New Albany Trust Company could appear before him and explain to him the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in said Floyd Circuit Court,and the said Judge of the United States District Court stated, or caused to be stated over the telephone, that such explana-

tion might be made on the following Monday, to-wit, February 16, 1903, and said Judge of the United States District Court did direct the Receiver, Frederic D. Connor, for the time being to suspend his demand for the possession of said property.

That said W. W. Watts, as attorney for said New Albany Trust Company, Receiver of said Circuit Court, prepared a petition for advice, in which it was stated that Frederic D. Connor had been appointed by the United States District Court in said bankruptcy proceedings, Receiver for the property and effects of M. Zier & Co., and that the order of appointment directed him to take possession of said property from the said Receiver of said Floyd Circuit Court, and stated that in the opinion of the Receiver of the Floyd Circuit Court, namely, the New Albany Trust Company, said order had been made under some misapprehension, and stated also the fact that said Watts had telephoned to the Judge of the United States District Court at Indianapolis, and that said Judge stated that he would hear the matter on Monday, the 16th of February, 1903, and said New Albany Trust Company, as Receiver, by said petition requested the said Floyd Circuit Court to authorize it or its Vice President, Henry E. Jewett, and said Watts, as its attorney, to specially appear in the United States District Court at Indianapolis and make a full and complete explanation of the exact condition of the record in said action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court, and accordingly said petition was filed on the 14th day of February, 1903, and thereupon on said day the said Floyd Circuit Court entered an order among other things authorizing Henry E. Jewett, vice-president of the New Albany Trust Company, Receiver, and W. W. Watts, as its attorney, to appear before the United States District Court at Indianapolis by a limited appearance and by pro-

testation against general appearance, which order, in this respect, is as follows:

> "And said Receiver is now hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels, and to suggest to said court the orders of this court and the fact that had it been fully informed, as is believed by this court, its order with respect to the assets herein would at the most have been a direction to make an application to this court at the proper time and in the proper way for the delivery of the said assets to such District Court's receiver, or trustee, after proper disposition and settlement of the matters herein."

Your petitioner states that he is informed and believes, and so charges, that all of this was done solely for the purpose of preventing any possible conflicts between the two jurisdictions, and that it was believed by said Watts and the New Albany Trust Company, and by the Judge of the Floyd Circuit Court, that upon said presentation the United States District Court would rescind its said order in so far as it directed the said Frederic D. Connor as receiver of said United States District Court to summarily take possession of said property of M. Zier & Co. from said receiver of the said Floyd Circuit Court, and that under this authorization, and not otherwise, the said W. W. Watts and Henry E. Jewett, vice-president of the New Albany Trust Company, Receiver of said Floyd Circuit Court, did appear in the District Court of the United States for the District of Indiana at Indianapolis on Monday, February 16, 1903, and exhibited to said court the said order of the Floyd Circuit Court authorizing them

To appear and make to the said Court a full and complete statement of the condition of said action of Joseph T. Ryerson & Son against M. Zier & Co. in the Floyd Circuit Court, and all of the proceedings had therein.

Your petitioner is informed and believes, and so states and charges, that after said explanation and statement had been made and argued by said W. W. Watts before the Judge of the United States District Court, which argument and explanation consumed several hours, and continued over from Monday, February 16, until Tuesday, February 17, the said Judge of the United States District Court refused in any way or to any extent to reconsider, modify or set aside his said order directing said Frederic D. Connor, Receiver of the said United States District Court, to summarily take from the said Receiver of the Floyd Circuit Court the said property, but upon the contrary peremptorily demanded of Henry E. Jewett, as the representative of the New Albany Trust Company, Receiver, to state whether or not he would turn over the property in the hands of the New Albany Trust Company, as Receiver aforesaid, to Frederic D. Connor, Receiver, and also demanded of said W. W. Watts whether or not he, as counsel for the New Albany Trust Company, Receiver, would advise it to turn over said property to Frederic D. Connor, Receiver. Said Judge remarking at the time that he did not want to go to New Albany with a club but would do so if necessary to obtain the property. Under these circumstances, and not otherwise, and believing that the said demand of the said United States District Court was peremptory, the said W. W. Watts, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company, Receiver, to turn over the said property to the said Frederic D. Connor, Receiver.

On the 17th day of February, 1903, the said W. W. Watts and the said Henry E. Jewett left Indianapolis,

as your petitioner is informed and believes, and so states and charges, under the impression that it was not necessary to enter any order respecting the proceedings which were had in the United States District Court on the 16th and 17th day of February, 1903, with respect to the said explanation and argument made by said Watts, and under the impression that no such order would be entered in respect thereto. But your petitioner says that an order was entered—a fact which, he is informed and believes, said Watts did not learn of until several days afterwards, and which your petitioner did not learn of until Monday, February 23, 1903, which order is as follows:

> "This cause coming on now to be heard upon the petition of Frederic D. Connor, filed herein on the 16th day of February, A. D., 1903, for the instructions of the court concerning the property and assets of said M. Zier & Co., which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Co., because of their insolvency; and the petitioning creditors in this cause and the said Connor, Receiver, as aforesaid, being now present and represented by George H. Hester and Wiliam Wilhartz, their solicitors, and said New Albany Trust Company, Receiver, as aforesaid, being now present and represented by Henry E. Jewett, its vice president, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its vice president, having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Co., in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certi-

fied copy of the order of his appointment as such receiver heretofore made by this court.

"It is now hereby ordered by the Court that said Connor, Receiver aforesaid, forthwith present a certified copy of the order of his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Co. that are now in possession or under control of said New Albany Trust Company, as receiver of the Floyd Circuit Court."

The said New Albany Trust Company, as receiver of the said Floyd Circuit Court, was and is in no way a party to said bankruptcy proceedings in said United States District Court, and had and has in on way appeared therein except only upon the occasion, and under the circumstances, and by the authority hereinbefore stated.

On the 14th day of February, 1903, the said Frederic D. Connor, as said receiver of the United States District Court, by George H. Hester, as his attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein, showing his appointment as such receiver by order of the United States District Court for the District of Indiana, and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as receiver of M. Zier & Co., to turn over and surrender to him, the said Frederic D. Connor, as receiver in bankruptcy, the property of the said M. Zier & Co., of which the said New Albany Trust Company, as receiver of M. Zier & Co., under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor, as such receiver, was made a party to said suit and the matter of said petition was continued until the next term of the said Floyd Circuit

Court. Copies of said petition and order made thereon are filed herewith and made part hereof, Marked Exhibit C

On the 19th day of February, 1903, W. W. Watts and the New Albany Trust Company, Receiver, appeared before the Judge of said Floyd Circuit Court at New Albany in Chambers, for the purpose of formally reporting to him the result of their appearance before the United States District Court at Indianapolis on the 16th and 17th days of February. The said Watts, as attorney for the New Albany Trust Company, then filed before the said Judge of the said Floyd Circuit Court a written petition and motion which was signed by him as attorney, as follows, to-wit:

"To the Honorable Judge of the Floyd Circuit Court in Chambers:

"Respectfully represents the New Albany Trust Company, Receiver herein, and W. W. Watts, one of its attorneys herein, that pursuant to the order of the court herein entered on Saturday, February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind., filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge presiding, a statement of the New Albany Trust Company, Receiver, under the order of this court setting forth the facts by protestation and limited appearance only and showing to said court the reasons for a modification of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its receiver to take possession of the assets of M. Zier & Co.

"This receiver and said attorney say they made diligent efforts to carry out the orders of this court with respect to those matters, but the order of said court remains as it was, and they now move the court to strike and expunge from the files herein the petition of this receiver filed herein on the 14th day of February, 1903, and the order entered thereon."

Upon the aforesaid appearance made by said Watts and said Henry E. Jewett, vice-president of the said New Albany Trust Company, on the 16th and 17th days of February, 1903, before the United States District Court at Indianapolis, the Judge of the said court seemed to feel that the petition for advice which the said New Albany Trust Company, Receiver, by said Watts, as its attorney, filed in the Floyd Circuit Court on the 14th day of February, 1903, was in some way offensive to him, the said Judge of the District Court of the United States, and for this reason said Watts sought by said petition and statement filed before the Judge of said Floyd Circuit Court to have leave to strike out and expunge the said petition, and withdraw it from the files. Said Watts did advise, and continue to advise, and at no time gave any contrary advice that the said New Albany Trust Company, as receiver of the Floyd Circuit Court, should turn over to Frederic D. Conner, receiver of the United States District Court in such bankruptcy proceedings, all of the property, assets and effects of M. Zier & Co., alleged bankrupts, and for this purpose said petition and statement was filed by said Watts as attorney for the New Albany Trust Company, receiver, and was signed by him as such attorney on the 19th day of February, 1903, before the Judge of the said Floyd Circuit Court and this was done in good faith because he had stated to the Judge of the said United States District Court that he would advise so. Said Watts was much embarrassed by the condition of affairs, and felt that the Judge of the said Floyd Circuit Court might misconstrue his action in the premises, and before going to New Albany on the 19th of February, 1903, he sought this petitioner, who is a lawyer residing in Louisville, Ky., and who is a friend of said Watts, and asked him to go to New Albany with him for the purpose of appearing for

said Watts before the Judge of the Floyd Circuit Court and explaining the action of said Watts in agreeing to advise the New Albany Trust Company, Receiver, to turn over the said property to Frederic D. Connor, Receiver. The petitioner did go with said Watts to New Albany and was present when the said petition and statement was filed before the Judge of the Circuit Court of Floyd County on that day, and this petitioner did undertake to explain the situation and to satisfy the said Judge. After filing the said petition, and on the same day, to-wit, on the 19th of February, 1903, the said Judge of the said Floyd Circuit Court made and entered the following order upon said petition and statement, to-wit:

> "And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of court, and it is now ordered that a rule be issued against the said W. W. Watts to appear before the said Judge on the 21st day of February, 1903, at 3 o'clock p. m., and show cause, if any he has, why he should not be punished for contempt."

On the same day, to-wit, February 19th, 1903, the New Albany Trust Company, Receiver, by Henry E. Jewett, vice-president, filed before the Judge of said Floyd Circuit Court its other and separate petition, which is as follows:

> "The New Albany Trust Company, receiver in the above-entitled cause, respectfully shows to the court that in pursuance of the order heretofore made by this court it appeared by limited appearance and protestation only, as ordered by this court before Judge Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that court, this receiver stated to the Hon-

orable Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in bankruptcy proceedings of M. Zier & Co., then pending in said court, the property and assets of said M. Zier & Co. in the hands of this receiver, and this receiver further states that it has not yet been able to make up its accounts as receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this court. But that it is ready to turn over to Frederic D. Connor, the receiver appointed by the United States District Court in bankruptcy all of the property of the said M. Zier & Co.; and this receiver now prays for an order of this court authorizing it to turn over to said Frederic D. Connor the property and assets of said M. Zier & Co. now in its hands, together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederic D. Connor, Receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Co., so turned over to said Connor as such receiver.

"This receiver further asks that upon making up and presentation of its accounts for allowances to this court, that it be allowed to resign as receiver of the said M. Zier & Co., and that upon the approval of its accounts its said resignation be accepted by this court, and that it be fully and finally discharged as such receiver."

"All of which is respectfully submitted.

"The New Albany Trust Company,

"By Henry E. Jewett,

"Vice President."

And afterwards, to-wit, on the same day the Judge of said Floyd Circuit Court, upon consideration of said petition and statement, made the folloiwng order:

> "And the Judge after reading said tender of resignation holds that the matters set forth show that said receiver is in contempt of court, and the Judge orders that a rule issue at once against said receiver to appear before the undersigned Judge on the 21st day of February, 1903, at 3 o'clock, p. m., and show cause, if any it has, or can, why it should not be punished for contempt of court."

And on the same day, to-wit, the 19th day of February, 1903, after the said New Albany Trust Company had filed its petition and statement and asked leave to resign before the Judge of the said Floyd Circuit Court, the said New Albany Trust Company addressed to Frederic D. Connor, Receiver for the United States District Court, for the District of Indiana, the following letter, to-wit:

> "Fred D. Connor,
> Receiver of U. S. District Court,
> District of Indiana.
>
> In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier & Co., as such receiver will state.
>
> "We, this morning, filed before the judge of the Floyd Circuit Court, in Chambers, report, a copy of which is attached hereto. Thereupon the judge stated orally that he wanted us to hold the property until our accounts as receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then, it will relieve us of embarrassment in the premises.
>
> "On the other hand, if you insist on immediate surrender of the property to you, we are bound to

say that we believe that to carry out in good faith the understanding with the honorable judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.

"Very truly yours,

"The New Albany Trust Company,

"By H. E. Jewett,

"Vice-president."

"February 19, 1903."

On the same day and after receipt by said Frederic D. Connor of said communication, he expressed to the New Albany Trust Company, Receiver, his unwillingness to delay the delivery of said property to him, and thereupon on said day the said property was delivered to him by the said New Albany Trust Company, Receiver, without any authorization or direction of the Floyd Circuit Court or the judge thereof.

On the following day, namely, February 20, 1903, this petitioner and said Watts appeared before the judge of the said Floyd Circuit Court, because the said judge had by telephone on the evening before requested their presence, and in pursuance of this request and in obedience thereto, they appeared. On that day an order was entered removing the New Albany Trust Company as receiver of the Floyd Circuit Court in said action, and appointing Charles D. Kelso as Receiver in its stead, and directing the said Kelso as receiver to demand of the said New Albany Trust Company and of Frederic D. Connor, the immediate possession of the property of M. Zier & Co., which came into the hands of said New Albany Trust Company, as receiver in the action, and requiring the said Kelso, Receiver, if the said New Albany Trust Company, or said Frederic D. Connor, should fail or refuse to immediately turn over or surrender possession of said assets and property to said Kelso, Receiver,

to report that fact to the judge of the court. Before entering this order, the New Albany Trust Company had actually, under the advice of said Watts, turned over said property to Frederic D. Connor, Receiver of the United States District Court, for the District of Indiana, in said bankruptcy proceedings, as above stated. That thereupon said judge of the Floyd Circuit Court ordered said Kelso to draw up the papers to remove said New Albany Trust Company and appointing himself (Kelso) as receiver in its stead; and that petitioner at the time believed that said judge and said Kelso intended to base their action upon the opinion of said petitioner; that is, to intervene in the bankruptcy proceedings in the Federal Court; and that thereupon said Kelso stated to petitioner that he desired him to sign the petition drawn as the court had directed as attorney for one of his (Kelso's) clients, and that would make the matter all right, as he (Kelso) did not want to appear in the attitude of asking the removal when he himself was going to be appointed in the stead of the company removed. Petitioner says that at no time did he represent in fact any other party in the case except the said W. W. Watts, and that merely as a friend, without compensation, except as stated above.

On the 20th day of February, 1903, after the entry of said order appointing him receiver in the stead of the New Albany Trust Company, Charles D. Kelso filed a written report before the judge of said Floyd Circuit Court in which it was stated that he demanded of the New Albany Trust Company possession of all the property and assets of said M. Zier & Co., which came into its hands as receiver of said M. Zier & Co., and that said New Albany Trust Company failed and refused to surrender the possession thereof for the reason as stated by it that it had turned over the plant of M. Zier & Co.,

located on Pearl and Oak streets, in the city of New Albany, to Frederic D. Connor, and that as to the other assets of said M. Zier & Co. in its hands it intended to account forthwith to the honorable judge of the Floyd Circuit Court.

And afterwards on the same day upon consideration of said report, the judge of the said Floyd Circuit Court entered an order directing the issuance of a summary writ directed to the sheriff of Floyd county, requiring the said sheriff to immediately seize and take into his possession and deliver over to said Charles D. Kelso, Receiver of M. Zier & Co., all the property of said M. Zier & Co., which said Frederic D. Connor had in his possession, which property was described in said order.

As this petitioner is informed, upon said last named order a writ was issued by the clerk of said Floyd County Circuit Court, and that the same was executed and the property taken from possession of Frederic D. Connor, Receiver, and given into the possession of Charles D. Kelso, Receiver of the said Floyd Circuit Court.

4. After said property, which was in its hands as receiver, was delivered by the New Albany Trust Co., receiver of the said Floyd Circuit Court, to Frederic D. Connor, receiver of the said United States District Court in the manner and under the circumstances hereinbefore stated, and after the removal by the judge of the said Floyd Circuit Court of said New Albany Trust Company, as receiver, and the appointment of Charles D. Kelso as receiver in its stead, and after the said property was, under the aforesaid writ, taken by the sheriff of Floyd county, Indiana, from the possession of Frederic D. Connor and placed in the possession of Charles D. Kelso, receiver of this said Floyd Circuit Court, to wit, on the 21st day of February, 1903, the said Frederic D. Connor, Receiver, filed his cer-

tain petition and affidavit in said bankruptcy proceedings in said United States District Court, stating and showing, among other things, said facts, and, upon consideration of said petition and affidavit, the said United States District Court, on said 21st day of February, 1903, in said bankruptcy proceedings, made and entered an order, ordering, among other things, as follows:

> "It is further ordered by the court that Charles D. Kelso, as receiver of M. Zier & Co., under appointment of the Floyd Circuit Court, and individually; Claude Citizen, deputy sheriff of Floyd county, Indiana, and individually; Thomas Smithwick, custodian of the property of said M. Zier & Co., under an allleged appointment of Charles D. Kelso, as receiver of the Floyd Circuit Court; William W. Watts and D. A. Sachs, as attorneys for Charles D. Kelso, as such receiver, and individually, and ~~such~~ of them, are hereby required to appear before this court, at Indianapolis, in this District, on Wednesday, the twenty-fifth day of February, 1903, at nine o'clock, a. m., of said day, and then and there show cause why they should not be punished for contempt for the violation of the orders of said court hereinbefore made.
>
> "It is further ordered by the court that the marshal of this district shall serve ~~such~~ of the parties named in the foregoing order by the delivery of a copy thereof to them, and ~~such~~ of them . . .
>
> "It is ordered by the court that so far as the proceedings upon the petition of the receiver filed on the 21st day of February, 1903, are instituted against the parties named therein for a contempt of this court, they shall be docketed in this court, in Indianapolis, and henceforth conducted under the title of the United States against the parties aforesaid."

The petitioner further states, that afterward, on the same day, to wit, on the 21st of February, 1903, the United States District Attorney, for the District of Indiana, filed

an information in the District Court of the United States, for said district, which is as follows:

"United States of America, District of Indiana, ss.:

"In the District Court of the United States, for the District of Indiana.

"November Term, A. D., 1902, at Indianapolis.

"Now comes Joseph B. Kealing, attorney of the United States, in and for the District of Indiana, who prosecutes for the said United States in this behalf, in his own person, and in the name and on behalf of the United States, alleges, informs and declares as follows, to wit:

"That in a certain proceeding in bankruptcy in the said district of Indiana, to-wit:

"In the matter of M. Zier & Co., Bankrupts, Case No. 37, in the said court, pending at New Albany, Indiana, certain orders and decrees had been made by the said United States District Court, the Hon. Albert B. Anderson, presiding judge, whereby Frederic B. Connor was appointed receiver to take charge of the property, goods, wares and merchandise of the said M. Zier & Co., Bankrupts aforesaid. That he had qualified as such receiver, and had lawfully taken possession of the said property aforesaid, then and there situated at New Albany, under and by virtue of the said order made by the court aforesaid. All of which fully appears in the affidavit herewith and upon which this information is based.

"That on the 20th day of February, A. D., 1903, that Raymond J. Morris, Claude Sittison, Thomas Smithwich, Charles D. Kelso, William W. Watts, and D. A. Sachs, whose given name is unknown to this affiant who made said affidavit, and to the attorney for the United States herein, did then and there, wrongfully, unlawfully, knowingly and forcibly take from the said Frederic D. Connor, receiver as aforesaid, the property, goods and chattels of M. Zier & Co., Bankrupts, and then and there withhold, wrongfully, knowingly and unlawfully, the possession and

custody of said property from the said Frederic D. Connor, receiver as aforesaid, well knowing at the time that he was the lawfully appointed receiver of the said United States District Court aforesaid, and then and there knowingly, wrongfully, unlawfully and willfully disregard and disobey the orders and decrees of the said court, all of which more fully appears in the accompanying affidavit which is made a part hereof, whereby they are each guilty of contempt of this court, contrary to the form of the statutes and against the peace and dignity of the United States.

"Joseph B. Kealing,
"United States Attorney."

The said affidavit referred to in said information is the same affidavit made by Frederic D. Connor, and filed in said bankruptcy proceedings as aforesaid, and the same upon which said rule in said bankruptcy proceedings was awarded.

The said rule and information as to this petitioner and W. W. Watts were set for hearing on the 9th day of March, 1903, and on that day the petitioner appeared in said United States District Court, at Indianapolis, to respond to said rule and information. Upon the calling thereof the petitioner inquired of the court whether he was required to respond to said rule or plead to said information, and the court ruled and adjudged that the petitioner should respond to said rule and plead to said information conjointly. Whereupon the petitioner filed his response and pleas to said rule and information, separate from the response and pleas of W. W. Watts. The said response denied the jurisdiction and power of the said United States District Court to make the orders directing its said receiver summarily to take from said receiver of the said Floyd Circuit Court the said property in the hands of the latter, and asserted that the possession of the property, which the said receiver of the said United States District

Court acquired from the New Albany Trust Company, then acting as receiver of said Floyd Circuit Court, without the consent and against the orders of said court, was an unlawful possession, and that the said retaking of said property under the orders of the Floyd Circuit Court was a lawful taking, but, nevertheless, that the petitioner had nothing whatever to do with the retaking of said property; and the said response further set out all the facts substantially as they are stated in this petition.

Upon the filing of said response and pleas the district attorney offered to introduce the testimony of witnesses to dispute in evidence the matter of said response and pleas, to which the petitioner then objected, on the ground that for the purposes of the proceedings for contempt the said response and pleas should be taken as true, but the court overruled the objection, to which the defendant excepted.

Thereupon the trial proceeded, and the District Attorney for the United States introduced oral and documentary evidence, and the petitioner did the like. The trial consumed several days, and at the conclusion of all the evidence and after argument of counsel the court delivered an opinion and made and entered the said order and judgment hereinbefore set out, adjudging the petitioner guilty of contempt, and ordering that he be confined in the jail of Marion county, Indiana, for the period of sixty days, and that he pay the costs of said proceeding and be confined until such payment of costs was made. The petitioner was at once committed to custody, and under said order and judgment he is now wrongfully and unlawfully confined in said jail.

The petitioner files herewith as parts of this, his petition, a complete transcript of the record in the case of Joseph T. Ryerson & Son v. M. Zier & Co., pending in the Floyd County Circuit Court, marked "Exhibit A," and a

complete transcript of the record in the said bankruptcy proceedings in the United States District Court for the District of Indiana, including the proceedings upon said rule and information, marked "Exhibit B."

Wherefore, the petitioner prays that your honors grant and issue a writ of habeas corpus, directed to Robert Metzger, sheriff of Marion county, in the state of Indiana, and ex officio jailer of said county, and Henry C. Pettit, marshal of the United States for the District of Indiana, either or both, as your honors may deem proper in the premises, commanding them to produce before your honors upon a day to be named in the writ the body of your petitioner, to the end that your honors may inquire into the cause of the restraint of the petitioner's liberty.

And your petitioner further prays that your honors grant and issue a writ of certiorari agreeably to the rules and practice of this honorable court, and further that your honors order and direct, by such order as may be appropriate in the premises, that the petitioner be admitted to bail conditioned for his appearance before this honorable court on the return day of the writ of habeas corpus, and your petitioner prays for such other or further orders as to your honors may seem meet.

DAVID A. SACHS.

State of Indiana, Marion County, ss.:

David A. Sachs, being duly sworn, upon his oath says, that the averments of the foregoing petition are true as he verily believes.

DAVID A. SACHS.

Subscribed and sworn to before me, the undersigned, this 17th day of March, 1903.

(Seal.) LOU A. ROBERTSON,
Notary Public, Marion County, Indiana.

My commission expires Nov. 26, 1904.

State of Indiana, Marion County, Set:

I, William E. Davis, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court within and for said county and State, the same being a Court of Record, and having a seal, do hereby certify that Lou A. Robertson was on March 17, 1903, an acting notary public within and for the county aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify all affidavits and the acknowledgments and proof of deeds or conveyances, and all other instruments of writing, and that the commission of the said Lou A. Robertson commenced on Nov. 26, 1900, and expires on Nov. 26, 1904.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, at Indianapolis, Indiana, this 17th day of March, 1903.

(Seal.) WM. E. DAVIS, Clerk.